

REMARKS/ARGUMENTS

35 USC § 112

Claims 32-50 and 52-58 were rejected under 35 USC § 112, second paragraph, as being indefinite for various reasons. The applicant agrees in some respects and disagrees in others. Nevertheless, claims 32, 52, and 53 were amended to even more clearly point out what the applicant defines his invention.

Specifically, the objected means plus function clauses ("subdividing means" and "liquid flow subdividing means") were replaced by structural elements reciting specific configurations ("...sample chamber is configured such that..." and "...optical detector coupled to the sample chamber and configured to detect an analyte signal from the film...").

Furthermore, the interrelation between the elements is even more clearly presented in the presently amended claims ("...a supply line fluidly coupled to the sample chamber..." and "...detector coupled to the sample chamber...").

With respect to the objected term "extremely thin layer", the applicant canceled that term.

Finally, with respect to the Examiner's concern of how volume segments were analyzed, the applicant amended claim 52 to remove the objected terms.

35 USC § 102

Claims 32-50, and 52-58 were rejected under 35 USC § 102 as being anticipated by U.S. Pat. No. 5,972,710. The applicant respectfully disagrees, especially in view of the amendments made herein.

It is well established that "...a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Therefore, "...the identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Among other elements, amended claim 32, and claims 33-50 as depending on amended claim 32 expressly require "...**a mixture of a chamber solution and a fluid immiscible with the chamber solution...**", that the "...**chamber is configured such that a film of chamber solution is formed** between the measuring surface and the immiscible fluid when the mixture is in the sample chamber...", and that the detector is configured to "...**detect an analyte signal from the film...**" These elements are clearly not taught by Weigl et al. Consequently, amended claims 32-50 should not be considered anticipated by Weigl et al.

Similarly, amended claim 52 expressly recites a step of "...**feeding a mixture of the liquid and a fluid that is immiscible with the liquid** into the sample analysis chamber **such that a film is formed from the liquid...**", and a further step of "...**detecting an analyte signal from the film...**" Once more, these elements are not taught by Weigl et al. Consequently, amended claim 52 should not be considered anticipated by Weigl et al.

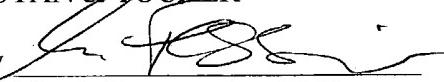
Furthermore, amended claim 53, and claims 54-58 as depending on amended claim 53 expressly require "...**adding to the liquid** in the supply line a plurality of volumes of **a fluid that is immiscible with the liquid...**" and "...**the volumes are added** in an amount sufficient **to form a plurality of volume segments from the liquid in the supply line...**" Again, these elements are not taught by Weigl et al. Consequently, amended claims 53-58 should not be considered anticipated by Weigl et al.

In view of the present amendments and arguments, the applicant believes that all claims are now in condition for allowance. Therefore, the applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

RUTAN & TUCKER

By



Martin Fessenmaier, Ph.D.

Reg. No. 46,697

Tel.: (714) 641-5100